

## NOTICE OF FINAL RULEMAKING

## TITLE 7. EDUCATION

## CHAPTER 2. STATE BOARD OF EDUCATION

## ARTICLE 13. CONDUCT

PREAMBLE

1. 

<u>Sections Affected</u>	<u>Rulemaking Action</u>
R7-2-1308	New
  2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):  
  
Authorizing statute: A.R.S. §15-203(A)  
  
Implementing statute: A.R.S. §15-203(A)(30)
  3. Effective Date of the Rule:  
  
These rules shall become effective sixty-days after filing with the Secretary of State.
  4. A list of all previous notices appearing in the Register addressing the final rule:

Vol. #	Page #	Issue Date
7	4360	October 5, 2001
7	5762	December 28, 2001
  5. The name and address of agency personnel with whom persons may communicate regarding the rule:  
  
Name: Christy Farley, Executive Director  
  
Address: 1535 W. Jefferson, Room 418, Phoenix, Arizona 85007  
  
Telephone Number: (602) 542-5057  
  
Facsimile Number: (602) 542-3046

6. An explanation of the rule, including the agency's reasons for initiating the rule:

The State Board of Education adopted a new rule, R7-2-1308, to define and provide guidance to schools as to the activities that would constitute immoral and unprofessional conduct of a certified person. The rule was contemplated in response to the requirement set forth in A.R.S. §15-203(A)(30).

7. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

Not applicable.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

9. The summary of the economic, small business and consumer impact:

The State Board of Education currently has authority to take disciplinary action against a certificate holder for immoral and unprofessional conduct. This rule will assist in defining immoral and unprofessional conduct and will have no economic, small business or consumer impact.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

A. Paragraph B, (1): After "employee", add "on the basis of race, national origin, religion, sex, including sexual orientation, disability, color or age;"; in response to public comment.

- B. Paragraph B, (9): Delete the subparagraph in its entirety, in response to public comment.
- C. Paragraph B, (10) and (11): Combine the 2 subparagraphs, moving “be under the influence” from (11) to (10), and deleting “without a prescription authorizing such use”; add statute citation, for clarification of intent and based on legal advice.
- D. Paragraph B, (9) through (14): Renumber to conform.

11. A summary of the principal comments and the agency response to them:

Comment

Reference Paragraph B (1), prohibited discrimination/harassment should be based on one of several legal bases: race, national origin, religion, sex or disability.

Agency Response

Paragraph B (1) amended as suggested.

Comment

Reference Paragraph B (4), the restriction is over broad, and illegal harassment is covered in Paragraph B (1).

Agency Response

The State Board felt that since Paragraph B (1) was being changed to include a specific basis for discrimination or harassment, that Paragraph B (4) was necessary to cover behavior which could be deemed to be unprofessional or immoral that did not fall within the definition included in Paragraph B (1).

Comment

Reference Paragraph B (9), the requirement seems over broad and likely to lead to baseless investigation. Defamation is already actionable under law and a remedy is

available.

Agency Response

The State Board concurred and Paragraph B (9) was deleted prior to adoption.

Comment

Reference Paragraph B (10) and (11), the proposed rule would appear to tacitly permit certificated personnel to possess, consume or use prohibited substances on school premises provided such personnel have a prescription authorizing such use. Also, the proposed rule would wholly contravene A.R.S. §13-3411, which establishes drug-free school zones.

Agency Response

The Board agreed, and did not intend to allow the use of alcohol, marijuana, narcotic or dangerous drugs on school premises or at school-sponsored activities. In addition, legal counsel has advised that physicians are prohibited from issuing prescriptions for the substances mentioned in the subparagraph.

Comment

Reference Paragraph B (12) and (13), the subparagraphs should refer only to “pupil” and not include “child”, as the implications of addressing any written, verbal or physical activity toward a child, unless the person is charged with abuse, are overwhelming.

Agency Response

The Board disagreed and felt strongly that sexual advances, sexual activity, relationships or dating constituting immoral or unprofessional conduct should not be limited to pupils, but include all children.

Comment

Reference Paragraph B (15), “pornographic” is not a legally defined term and encompasses speech that is constitutionally protected.

Agency Response

The Board disagreed and felt strongly that it could identify and label materials as “pornographic” when such materials had been provided to them as part of a complaint against a certificated individual.

Comment

Reference Paragraph B (16), it was suggested that this be changed to say, “engage in conduct which would both discredit the teaching profession and impair the ability of the individual to teach.”

Agency Response

The Board disagreed, stating that it did not believe that it was appropriate that the conduct would need to meet both thresholds (discredit the profession and impair the ability to teach). In addition, the Board felt that impairment of the ability of an individual to teach should not necessarily be a relevant factor in determining whether someone’s conduct constitutes an immoral or unprofessional act.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

13. Incorporations by reference and their location in the rules:

None.

14. Was this rule previously adopted as an emergency rule?

No.

15. The full text of the rule follows:

TITLE 7. EDUCATION

CHAPTER 2. STATE BOARD OF EDUCATION

ARTICLE 13. CONDUCT

R7-2-1308. Unprofessional and immoral conduct

- A. Individuals holding certificates issued by the Board pursuant to A.A.C. R7-2-601 et seq., and individuals applying for certificates issued by the Board pursuant to A.A.C.

R7-2-601 et seq. shall:

1. make reasonable efforts to protect pupils from conditions harmful to learning, health or safety;
2. account for all funds collected from pupils, parents or school personnel;
3. adhere to provisions of the Uniform System of Financial Records related to use of school property, resources or equipment; and
4. abide by copyright restrictions, security or administration procedures for a test or assessment.

- B. Individuals holding certificates issued by the Board pursuant to A.A.C. R7-2-601 et seq., and individuals applying for certificates issued by the Board pursuant to A.A.C.

R7-2-601 et seq. shall not:

1. discriminate against or harass any pupil or school employee on the basis of race, national origin, religion, sex, including sexual orientation, disability, color or age,
2. deliberately suppress or distort information or facts relevant to a pupil's academic progress;

3. misrepresent or falsify pupil, classroom, school or district-level data from the administration of a test or assessment;
4. engage in a pattern of conduct for the sole purpose or with the sole intent of embarrassing or disparaging a pupil;
5. use professional position or relationships with pupils, parents or colleagues for improper personal gain or advantage;
6. falsify or misrepresent documents, records or facts related to professional qualifications or educational history or character;
7. assist in the professional certification or employment of a person the certificate holder knows to be unqualified to hold a position;
8. accept gratuities or gifts that influence judgment in the exercise of professional duties;
9. possess, consume, or be under the influence of alcohol on school premises or at school-sponsored activities;
10. illegally possess, use, or be under the influence of marijuana, dangerous drugs, or narcotic drugs, as each is defined in A.R.S. §13-3401;
11. make any sexual advance towards a pupil or child, either verbal, written or physical;
12. engage in sexual activity, a romantic relationship or dating of a pupil or child;
13. submit fraudulent requests for reimbursement of expenses or for pay;
14. use school equipment to access pornographic, obscene or illegal materials;  
or
15. engage in conduct which would discredit the teaching profession.

- C.     Individuals found to have engaged in unprofessional or immoral conduct shall be subject to, and may be disciplined by, the Board.
- D.     Procedures for making allegations, complaints and investigation of unprofessional or immoral conduct shall be as set forth in this Article.